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DATE: July 20, 2006

RE: Application Serial No. 10/517,725
SAFETY TOP BALUSTRADE FOR A CAR OF A MACHINE ROOM-
LESS ELEVATOR
Our File: OT-5076

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Ana Rivera**-NOTICE-**

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Appellant: DET, et al.)
Serial No. 10/517,725) Group Art Unit: 3654
Filed: December 10, 2004) Examiner: Eric E. Pico
For: SAFETY TOP BALUSTRADE FOR A CAR)
OF A MACHINE ROOM-LESS ELEVATOR)

APPEAL BRIEF

1. THE REAL PARTY IN INTEREST

The real party in interest in this appeal is Otis Elevator Company. Ownership by Otis Elevator Company is established by assignment document recorded for this application on September 19, 2005 on Reel 016815 Frame 0173.

2. RELATED APPEALS AND INTERFERENCES

Appellant knows of no related patent applications or patents under any appeal or interference proceeding.

3. STATUS OF CLAIMS

Currently, claims 1-2 and 4-6 are rejected. Claims 1-2 and 4-6 are being appealed.

4. STATUS OF AMENDMENTS

There has been an amendment to the claims made after the final rejection to correct a 35 U.S.C. § 112 rejection. The amendment overcame that rejection and the Examiner stated that the amendment will be entered.

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5. SUMMARY OF INVENTION

The invention is directed to a safety balustrade for the top of an elevator car. Referring to Figures 1 and 2 of the application, the top of the elevator car has a balustrade 20 that surrounds the roof 16, except along an edge of the roof, which is adjacent to the front wall of the car (not shown), in which the car door 22 is located. It is usually not necessary to have the balustrade extend along the front wall because the space between the front wall of the hoistway and the elevator car is very small and thus, there is no danger of falling.

The balustrade 20 includes a fixed structure 21 having a plurality of vertical uprights 24 fixed near the periphery of the roof, and at least two guard rails 26, 30 fixed at different heights on the uprights. The fixed structure is interrupted to create a passageway, which corresponds to the location of the controller 14 in the hoistway. At the passageway, the balustrade includes a mobile structure 34 that includes at least two bars 36, 38, which are telescopically inserted within the ends of the guard rails 26, 28. Thus, the mobile structure 34 is usually in its extended position, so that all three walls around the roof are protected by the balustrade. However, when the elevator car stops just below the controller, a worker can slide the moveable structure, so that the moveable structure is then contained within the two guard rails, thereby allowing the worker free passage to the controller 14, without having to reach across the balustrade.

6. ISSUES

Claims 1, 2, 4, and 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kunito (JP 06-032555) in view of Roose (U.S. 5,170,746). Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Kunito (JP 06-032555) in view of Roose (U.S. 5,170,746) and further in view of Purvis (U.S. 5,683,074).

7. ARGUMENTA. Rejection under 35 U.S.C. § 103(a) as being unpatentable over Kunito and Roose.1. Claims 1, 2, 4, and 5

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some

suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

Applicant claims: "a mobile structure comprising at least two bars that are telescopically mounted inside the guard rails, so as to slide between an open position where the bars are inserted within the guard rails, and a closed position where the bars are extended out of the guard rails, wherein the mobile structure is positioned along the edge of the car roof so as to allow access to the controller mounted in the hoistway." Thus, Applicant is claiming a mobile structure that has two bars that slide between an open position and a closed position.

The Examiner asserts that Kunito discloses a safety top balustrade, but that Kunito is silent concerning a telescopically mounted mobile structure. The Examiner points to Roose as teaching a mobile structure comprising two bars that are telescopically mounted inside guard rails so as to slide between an open position and a closed position. The Examiner then states that it would have been obvious to one of ordinary skill in the art to position the mobile structure taught by Roose along the edge of the car roof disclosed by Kunito to facilitate further access to a controller or other various kinds of device and members affixed to the wall surface of a hoistway.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); MPEP § 2143.01. In this case, there is no motivation to combine Kunito and Roose, and in fact Kunito teaches away from being combined with Roose.

Kunito teaches having a working floor that pivots toward a wall surface of the hoistway around a supporting point. Specifically, on page 4 of the translation, Kunito explains that the auxiliary working floor pivots toward the wall surface and "[a]s a result, there is **no need for sliding members as in the past**, and various operations can be carried out using the working floor main body and auxiliary working floor, so that a wide working space can be realized using a simple structure." (Emphasis supplied.) Thus, the Kunito invention is meant to overcome problems with sliding members and one skilled in the art would not have combined Kunito with Roose, which specifically teaches the sliding guide rails. Kunito cannot be combined with any

reference that teaches sliding members, as Kunito specifically teaches away from having sliding members.

In the Advisory Action, the Examiner replies that because Kunito shows a permanent fixed guide rail around the perimeter of the top of the elevator and that having a slidable bar incorporated into the guide rail in no way criticizes, discredits, or otherwise discourages the solution claimed. However, the Examiner is ignoring the specific teachings within the reference itself. It is improper for the Examiner to merely point to the picture and say that the reference can be combined, when the language in the reference specifically states that invention is meant to overcome the difficulties with sliding members.

In addition, because Kunito teaches a pivoting floor surface, the handrails would be moving on a radius and it would be physically impossible to have the rails associated on the pivoting floor to telescopically mate with the rails on the stationary working floor. Accordingly, there is no way to combine Kunito and Roose.

Thus, there is no motivation to combine the references and in fact Kunito teaches away from being combined with Roose. Accordingly, Appellant submits that claims 1, 2, 4, and 5 are patentable over Kunito and Roose and the Examiner's rejection under 35 U.S.C. § 103(a) is improper.

B. Rejection under 35 U.S.C. § 103(a) as being unpatentable over Kunito and Roose, and further in view of Purvis.

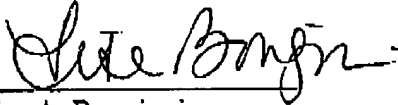
1. **Claim 6**

Claim 6 includes the following elements: "a mobile structure comprising at least two bars that are telescopically mounted inside the guard rails, so as to slide between an open position where the bars are inserted within the guard rails, and a closed position where the bars are extended out of the guard rails, wherein the mobile structure is positioned along the edge of the car roof so as to allow access to the controller mounted in the hoistway." These are the same elements that were discussed above under subheading A. Moreover, Purvis does not remedy the deficiency of Kunito and Roose. Accordingly, claim 6 is patentable and the Examiner's rejection is improper.

C. Conclusion

For the reasons cited above, Appellant respectfully submits that this application is in condition for allowance and request reversal of the outstanding rejections and early allowance of this application.

Respectfully submitted,

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8. APPENDIX A

Appealed Claims

1. Safety top balustrade for a car of a machine room-less elevator which moves in a hoistway, on a wall of which a controller of the elevator is secured, said balustrade comprising:

a fixed structure comprising a plurality of vertical uprights located at intervals near the edge of the car roof and at least two guard rails fixed at different heights on the uprights, the fixed structure located around at least a portion of the periphery of the car roof,

a mobile structure comprising at least two bars that are telescopically mounted inside the guard rails, so as to slide between an open position where the bars are inserted within the guard rails, and a closed position where the bars are extended out of the guard rails,

wherein the mobile structure is positioned along the edge of the car roof so as to allow access to the controller mounted in the hoistway.

2. Balustrade according to claim 1, wherein a bridge comprising a horizontal plate is slidably mounted on the roof of the car between a retracted position in which it is placed completely on the roof, and an extended position in which a portion of the bridge protrudes outside of the roof across the space between the car and the wall of the hoistway so as to allow access to the controller mounted in the hoistway.

4. Balustrade according to claim 1, wherein the bars of the mobile structure are connected at their ends by a cross bar that acts as an abutting element and which allows the mobile structure to be moved integrally.

5. Balustrade according to claim 1, wherein the mobile structure is secured in its retracted position or in its extended position by means of locking elements inserted through holes drilled in the guard rails and the bars.

6. Balustrade according to one of the preceding claims, wherein the guard rails and the bars have a square section and are made of steel.